

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION AT DAYTON**

CLEMENS DEVELOPMENT COMPANY, INC.	:	CASE NO. 3:06-cv-188
	:	Chief Magistrate Judge Michael Merz
Plaintiff	:	
vs.	:	<u>CONSENT DECREE</u>
	:	<u>RENDERING FINAL JUDGMENT</u>
BEAVERCREEK TOWNSHIP TRUSTEES, et al.	:	
Defendants	:	

This cause came on for hearing at the request of the Plaintiff, Clemens Development Company, Inc., and the Defendant, the Board of Trustees of Beaver Creek Township in Greene County, Ohio, to enter a decree of final judgment in accordance with the settlement agreement of the parties as evidenced by the signatures set forth below of the Plaintiff and the members of the Board of Trustees of Beaver Creek Township and their respective attorneys of record.

Based upon the motions and material submitted, this Court hereby makes the following findings:

1. On November 18, 1996, the Defendant approved the application identified by

Beavercreek Township Zoning Case No. 707 so as to create a Planned Unit Development (PUD) to be known as Arlington Place and The Colony. As part of the approval of Case No. 707 the Defendant stipulated, among other things, that the density of the PUD would not exceed 1.7 units per acre;

2. On November 18, 1996, the Defendant approved the application identified by Beavercreek Township Zoning Case No. 716 so as to approve a specific site plan for the Planned Unit Development (PUD) to be known as Arlington Place and The Colony which was created by the Defendants' approval of Case No. 707. Said site plan provided for the creation of 151 lots;

3. On December 5, 2005, the Plaintiff filed an application identified by Beavercreek Township Zoning Case No. 707-A to increase the gross density of the PUD from 1.7 units per acre to 1.75 units per gross acre. This application was denied by the Defendants on March 13, 2006;

4. On December 5, 2005, the Plaintiff filed an application identified by Beavercreek Township Zoning Case No. 716-E to modify the specific site plan for the PUD so as to increase the number of lots in the PUD from 151 to 158 by adding seven lots in Section 4 of "Arlington Place". This application was denied by the Defendants on March 13, 2006;

5. On June 26, 2006, the Plaintiff filed the pending action against the Defendants seeking injunctive relief, a declaratory judgment and damages;

6. Subsequent to the submission of a motion for summary judgment filed on behalf of

the Defendants, the parties to this action reached the following agreement to settle the pending lawsuit:

a. The gross density of that area of the PUD identified as "Arlington Place" and "The Colony" shall not exceed 1.721 units per acre;

b. The specific site plan for that area of the PUD identified as "Arlington Place" and "The Colony" would be amended to permit four additional lots to be created in Section 4 of the "Arlington Place" portion of the PUD and that the specific site plan attached as Exhibit 1 would control the future development of "Arlington Place" and "The Colony";

c. The PUD would remain subject to all conditions imposed by the Defendants in Beaver Creek Township Zoning Case Numbers 707 and 716 to 716-D except as otherwise modified by any Consent Decree;

d. That the pending lawsuit be dismissed with prejudice subject, however, to this Court maintaining jurisdiction for purposes of enforcement and interpretation of the Consent Decree.

7. Section 505.07 of the Ohio Revised Code permits a Board of Township Trustees to settle any court action by consent decree or court-approved settlement agreement which may include an agreement to rezone any property involved in the action as provided in the consent decree or court-approved settlement agreement without following the procedure in Section 519.12 of the Revised Code and which may also include township approval of a development plan for any

property involved in the action as provided in the decree or court-approved settlement agreement provided the Court make specific findings of fact that notice has been properly made pursuant to Section 505.07 and the consent decree or court-approved settlement agreement is fair and reasonable;

8. The parties have provided notice as required by Section 505.07 of the Ohio Revised Code;

9. The settlement agreement negotiated and agreed to by the parties is fair and reasonable.

THEREFORE, BASED UPON THESE FINDINGS, THIS COURT HEREBY ORDERS THE FOLLOWING:

1. The gross density for that area of the PUD identified as "Arlington Place" and "The Colony" approved by the Defendants in Beaver Creek Township Case No. 707 on November 18, 1996, is hereby increased from 1.7 units per acre to 1.721 unit per acre;

2. The specific site plan as initially approved by the Defendants in Beaver Creek Township Case No. 717 on November 18, 1996, and as subsequently modified by the Defendants in Beaver Creek Township Zoning Case Nos. 717 A-D is hereby further modified so as to create four (4) additional lots in Section 4 of Arlington Place;

3. Section 4 of that portion of the PUD known as "Arlington Place" may be developed in accordance with the specific site plan attached as Exhibit "1" to this Consent Decree;

4. The PUD will remain subject to all conditions imposed by the Defendants in Beavercreek Township Zoning Case Numbers 707 and 716 to 716-D except as may be modified by the Consent Decree;

5. This case is hereby dismissed with prejudice subject, however, to this Court maintaining jurisdiction for purposes of enforcement and interpretation of the Consent Decree;

6. Each party shall bear its own cost and expense incurred in pursuing and defending the pending case;

7. The terms and conditions of this Consent Decree shall be binding and enforceable against all parties on whose behalf this Consent Decree has been submitted to this Court as well as their successors and assigns.

May 30, 2008.

s/ **Michael R. Merz**
Chief United States Magistrate Judge

Submitted by:

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EXHIBIT “1”

The specific site plan referenced as Exhibit “1” in the *Consent Decree Rendering Final Judgment* has been filed with the Court via conventional filing. Parties may access this filing at the Clerk’s Office for the United States District Court, Southern District of Ohio, at Dayton.